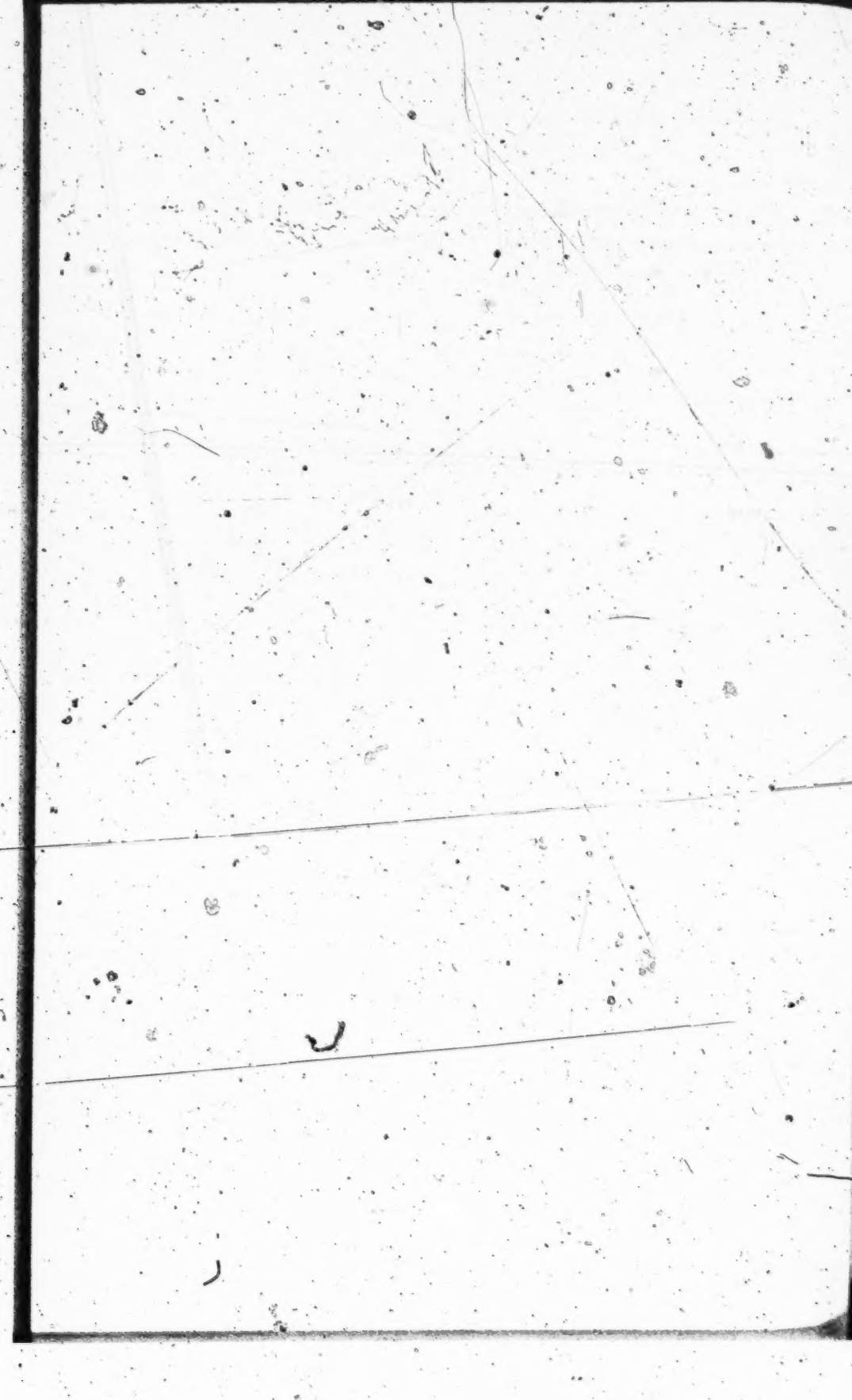

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 70

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

REPLY BRIEF OF PETITIONER IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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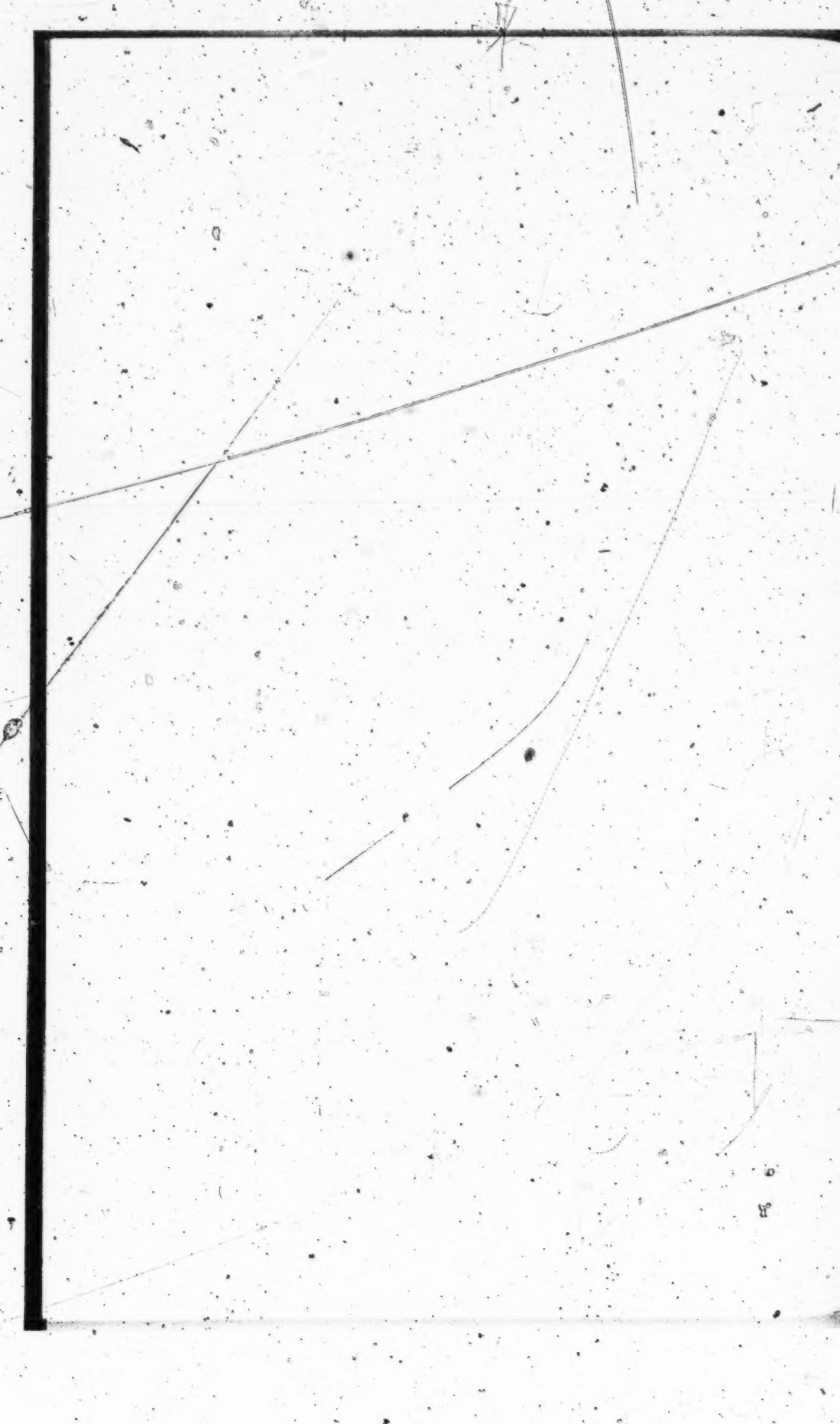

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1169

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

REPLY BRIEF OF PETITIONER IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

This reply brief is necessary because of outright errors in respondents' brief.

I.

Respondents have conceded in the conclusion to their brief that the questions presented by the petition are "large issues." Respondents, however, argue that these issues are nevertheless nonexistent. They assert that the case involves merely a mundane question of fact regarding the readability of the notice in the ticket.

The majority decision of the Court below would not be a virtual denunciation of the treaty if it only held that the notice was not readable. If the question of readability were all that is involved, petitioner might readily agree

that this question is not sufficiently important to warrant review by this Court. However, the basic question is not the readability of the notice in the ticket, but whether the sanction of Article 3 (2)[1] applies if the notice is not readable.

The express language of the treaty says NO, the sanction does not apply. Both Courts below have held that the treaty says YES, the sanction does apply. Both the District Court and the majority of the Court below have held contrary to the plain language of the treaty, and the clearly expressed intent of the drafters of the treaty. Their decisions are barren of any relevant authority of any kind. To repeat the words of Judge Moore in his dissenting opinion:

> "The majority in their opinion indulge in judicial treaty-making.
>
> * * * * *
>
> "The majority do not approve of the terms of the treaty and, therefore, by judicial fiat they rewrite it. They think a 'one-sided advantage' is being taken of the passenger which must be offset by a judicial requirement that the passenger have notice of the limitation of liability." (R. 74a).

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[1] "The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his ability." 49 *Stat.* 3015.

II.

Respondents have misrepresented the position of the Civil Aeronautics Board (the Board) with respect to the sufficiency of the form and content of the standard IATA passenger ticket and baggage check.

The Board expressly approved the form and content of the standard IATA passenger ticket and baggage check in 1957.[2] This document had been drafted in both form and content so as to eliminate legal and policy objections expressed by the Board to the airline ticket previously in use.[3] The Board's own staff was instrumental in re-drafting the ticket.[4] Respondents have seized upon the Board's reservation as to one provision of the ticket,[5] irrelevant herein, and mischaracterized same as a reservation by the Board as to the whole ticket.

The Board has not ordered any change in the form or content of the passenger ticket since 1957, as implied in respondents' brief. The passenger ticket approved by the Board in 1957, and which the majority of the Court below now find unsuitable to meet a judicially conceived requirement of notice in the treaty, is still in daily use by all members of the International Air Transport Association (IATA), whose members comprise 100 airlines from over 60 countries, and all members of the Air Transport Association of America (ATA), whose membership comprise 36 domestic airlines. See, Motions of IATA and ATA herein for leave to file briefs as *amici curiae*.

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[2] *Pan American World Airways, Inc., et al., Conditions of Carriage and Related Traffic Regulations*, 24 C.A.B. 575, 577 (1957).

[3] *Id.* at 575-6.

[4] *Ibid.*

[5] Which states that for purposes of Article 1 of the Convention the "agreed stopping places" shall be those shown on the ticket or on the carrier's timetable. 24 C.A.B. 575 at 576-7.

In 1963 the Board took steps within its jurisdiction, entirely unrelated to the *requirements* of the treaty, to bring to the attention of American passengers the legal liability limitations, including dollar amounts, imposed by the treaty.[6] Specifically, the Board adopted an economic regulation which requires carriers, subject to the jurisdiction of the Board, to give notice to their passengers of the legal liability limitations of the Convention, the dollar amount thereof and the availability of accident insurance. This notice is given by means of signs posted at ticket counters, and at the carrier's option, in a separate printed statement, on the ticket envelope or on the ticket itself.[7]

In 1966 a substantial number of United States and foreign flag carriers (including petitioner), at the behest of the United States Government, entered into an agreement whereby each participating carrier agreed to a limit of liability of $75,000. The Board approved this agreement and, in doing so, required the carriers to furnish a separate piece of paper notifying their passengers of this agreement to a higher limit.[8] Since then the Board has taken steps to amend 14 C.F.R. § 221.175 to permit these carriers to use this new form of notice rather than the 1963 form of notice.[9]

In none of these proceedings has the Board ever recommended or adopted any amendment or modification in the form or content of the IATA passenger ticket and baggage check itself.

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[6] CAB Economic Reg. No. ER-395 (Oct. 31, 1963). This Regulation amended 14 C.F.R. §221.175, effective March 1, 1964.

[7] *Id.* at 9-10.

[8] CAB Docket 17325, Order No. E-23680, May 13, 1966.

[9] CAB Docket 17725, EDR-105, September 19, 1966.

Regardless of which form the passenger ticket may take, now or in the future, and regardless of the steps the Board has taken, or may take in the future, to bring to the attention of American passengers the existence and amount of the treaty limitation, the questions which arise in this case will constantly recur.

III.

When respondents finally do touch upon the basic question in issue, they contend that it should be left to each country to decide for itself whether the sanction applies if any of the particulars listed in Article 3 (1)[10] are omitted from the ticket. This is an outright invitation to chaos in the interpretation and application of the treaty, and could lead to as many separate and diverse decisions as to the same ticket as there are parties to the treaty. Such a course would lead to the destruction of the basic purpose of the treaty, *i.e.*, uniformity. Respondents cite absolutely no authority in support of this position.

Even more than that, this theory suggested by respondents flies in the face of the express language of the treaty. Article 3 (2) provides:

> "The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention." 49 *Stat.* 3015.

Respondents refer to this language in support of their theory that the treaty leaves to each country the decision of whether a particular ticket is adequate under Article

[10] 49 *Stat.* 3015.

3(1). To the contrary, this language of Article 3 (2), on its face, clearly evidences the intent of the parties that the irregularity of the ticket does not prevent the application of the rules of the Convention to the transportation. Thus, even in the absence, irregularity or loss of the ticket, the objective of uniformity is still achieved.

IV.

Respondents contend that three of the questions raised by petitioner are not issues in the case. With regard to Question 1., what has been stated *supra,* pages 1-2, clearly demonstrates the validity of this question.

Regarding Question 3., respondents expressly moved to dismiss petitioner's affirmative defenses seeking to limit liability for the alleged baggage losses (R. 10a, 5a-7a). Both the District Court and the majority of the Court below expressly held that the baggage checks delivered herein did not satisfy the requirements of Articles 4 (3) (h) and 4 (4). See, 253 F. Supp. 237 at 239 and 243; 370 F.2d 508 at 513-514; Appendix B, pp. 22-24, 47, 52. The holding of the majority of the Court below that the baggage check is inadequate under Articles 4 (3) (h) and 4 (4) has indeed placed the Second Circuit in direct conflict with the First Circuit regarding the legal sufficiency of the identical document under the treaty. See, *Seth* v. *British Overseas Airways Corporation,* 329 F.2d 302 (1st Cir. 1964), *cert. denied,* 379 U.S. 858 (1964). Contrary to the statement in respondents' brief, this conflict is direct and real, and not "transparent." See, Petition, pp. 16-17.

Finally, petitioner at no time has conceded that the question of print readability is one of law to be decided by a court. Petitioner did concede that the question of whether the statement in the standard airline passenger ticket and

baggage check—referring to the applicability of the liability rules of the treaty to the transportation—is adequate to meet the requirements of the treaty, is a question of law for the Court. But petitioner did not concede that the fact question of readability of the document should be decided by a court rather than a jury. Therefore, Question 4. is properly in the case. See Judge Moore's dissenting opinion, Appendix B, p. 25.

V.

Respondents comment in their brief that petitioner neglected to refer to discussions in the United States Senate concerning the merits of the Warsaw Convention. Petitioner did not make reference to these discussions because they were concerned with the question of whether the United States should remain a party to the treaty, and not with the meaning of the treaty. Throughout the history of this case, respondents have been unable, and have failed, to deal with the treaty as it stands. They have consistently been distracted in their approach to the questions in the case by the merits of the treaty itself, that is, whether the treaty is good or bad for the United States. For example see, R. 18a.

The majority of the Court below also has been distracted by the public clamor in recent years concerning the question of whether the United States should remain a party to the treaty. Appendix B, p. 19. Again, as stated by Judge Moore in his dissenting opinion:

> "The original limitations in the Convention may well be outmoded by now. Substantial revisions upward have been made but they have been made, as they should be, by treaty and not by the courts.

Judicial predilection for their own views as to limitation of liability should not prevail over the limitations fixed by the legislative and executive branches of Government even though this result is obtained by ostensibly adding to the treaty a requirement of actual understanding notice." Appendix B, p. 25.

CONCLUSION

This case does not involve a mere question of fact as to the readability of the ticket, as urged by respondents, but questions which go to the very meaning of the treaty itself. The consequences of the decision of these questions far transcend the interests of the immediate parties. The basic considerations underlying the questions in this case involve the good faith, honor and integrity of the United States in its relations with other nations. Therefore, these questions should be decided finally by this Court.

Respectfully submitted,

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May 3, 1967

Certificate of Service

I hereby certify that I have, this ~~2nd~~ 3d day of May, 1967, served the foregoing reply brief upon respondents, and upon the International Air Transport Association and the Air Transport Association of America, amici curiae, by depositing same in a United States mail box at One Rockefeller Plaza, New York, New York 10020, with first class postage prepaid, addressed to the respective attorneys of record as follows:

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May 3, 1967

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